IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 2172 OF 1993

Bansilal Dattatraya Madiwale,
Occupation-retired,
R/at 636 Kasba Peth, Pune. ...Petitioner.
Vs.
Dhondopant Balkrishana Kulkarni
Occupation-Pensioner.
R/at 636, Kssba Peth, Pune. ,,Respondent.

Mrs. Suhasini Mutalik for the petitioner.
None for the respondent.

CORAM : ANOOP V.MOHTA J.
DATE : 15TH JULY, 2005.

ORAL JUDGMENT.

. The petitioner is the landlord and respondent is the tenant. The premises consists of two rooms on ground floor in house bearing No. 636 situated at Kasba Peth, Pune. Both the Courts, after considering the material, as well as, the evidence led by the parties, held in favour of the petitioner that the case of bonafide need, as sought, has been made out. However, the Additional District Judge, Pune, by the impugned judgment and order dated 29/8/1992, (appellate Court) allowed the appeal filed by the respondent-tenant and dismissed the suit for possession of the petitioner on the sole ground of the greater hardship to the tenant, though confirmed the finding of bonafide need of the

petitioner. Therefore, the petitioner has invoked the provisions of Article 227 of the Constitution of India.

2. Heard Mrs. Suhasini Mutalik, the learned Counsel, appearing for the petitioner. None appeared for the respondent, though served. The present petition was admitted on 26/7/1993, only on issue of " relative hardship".

3. The petitioner-landlord, has deposed and, as accepted by the courts below that there are, 14 members in his family, which includes, wife, old mother, 3 sons, 5 grand children. They are in occupation of three rooms i.e. two rooms on the first floor, one room on the second floor. Out of two rooms on the first floor, one is used, as a kitchen, there is no toilet on the first floor but there is a bathroom. On the second floor there is neither toilet nor bathroom. The terrace is open to the sky having tin sheets over it. Therefore, that area is not useful for the respondent. The petitioner himself is suffering from hyper tension and cervical cord compression and therefore facing difficulty in walking and therefore, advised to stay on the ground floor. He is unable to walk properly. It is

difficult for him to climb the staire-case. He has also suffered heart stroke. Both the Courts below therefore, right in concluding the issue of bonafide need in favour of the landlord.

4. On the other hand, the tenant-respondent, at the relevant time, aged 70 years, living in the premises in question with a son. The trial Court, after considering the evidence including a issue of greater hardship, passed decree in favour of the landlord. It is the appellate Court, even after confirming the reasoning and finding in favour of the landlord, about bonafide need, dismissed the suit on the ground of comparative hardship by observing the tenant would suffer greater hardship, if decree was passed, on the basic foundation, that the landlord petitioner has three sons they are financially sound. On the other hand, tenant-respondent is retired, aged person and he has only one son. The financial condition of the landlord-petitioner is sound and he can secure an alternative accommodation The tenant’s son is working, as a clerk, it would be difficult for them to secure any other accommodation.

5. The learned Counsel, appearing for the

petitioner has relied on **2003 AIR SCW 3307 and 2003 (Badrinaran Chunilal Bhutada V. Govindram Ramgopal Mundada) AIR SCW 1027 (Bhimanagouda Basanagouda Patil V. Mohammed Gudusaheb)** to support her submission, that the term "comparative hardship and greater hardship", as contemplated under the Bombay Rents Hotel and Lodging House Rates Control act, 1947 (for short Bombay Rent Act) or even any other related Legislation in no way expanded to this extent of financial conditions of the parties i.e. the landlord or the tenant.

6. The Apex Court in **Bhimanagouda (Supra),** after considering the Karnataka Rent Control Act, interpreting the term comparative hardship, observed as under;

> "Therefore the learned District Judge held comparative hardship in favour of the tenant solely on the basis of affluence of the parties. If this is a correct approach then an affluent landlord can never get possession of his premises, even if he proves all his bonafide needs. The fact that a person has a capacity to purchase the property cannot be the sole ground to hold against the landlord while deciding the question of comparative hardship. If the purchase is pursuant to a genuine need of the landlord the said purchase has to be given due weightage unless, of course, the purchase is actuated by collateral consideration."
>
> "Therefore, we have considered that aspect of the case and we are of the opinion assuming there will be some hardship to the tenant by

> having to vacate the premises, same can be mitigated by granting a reasonable time to vacate, bearing in mind the fact that the tenant has been residing in the suit house for considerably long period of time and this litigation itself has consumed nearly 12 years and the tenant has not taken any steps to find cut any alternative accommodation."

7. In Badrinarayan (Supra), the Apex Court after considering the Bombay Rent, Act, explained the word "comparative hardship" in a great detail. The relevant factors which need to be considered are as under;

> (i) All the circumstances of the case, (ii) reasonable accommodation available for the landlord or the tenant (iii) reasonable accommodation, does not mean suitable in all respects as the suit accommodation is.(iv) Judge should exercise sound discretion to determine the issues, on the facts and circumstances of the case, by taking into consideration, comparative inconvenience, loss, trouble, prejudice. (v) the extent of direness or pressing nature of the need for eviction as against the direness or need of the tenant to occupy the premises (vi) The availability of such premises with the landlord, and or the

> tenant lastly, even though there may be some difficulty or problem to the tenant, for vacating the premises, the same can be compensated by granting sometime to vacate the premises.

8. In the present case, the concurrent findings of the facts, as referred above in relation to bonafide need in para 2 also speaks for itself. I am of the view, that once the landlord, duly proved his "bonafide" "reasonable" "need" of the premises, a issue of greater hardship also tilt in favour of the landlord and rightly observed by the trial Court.

9. The hardship to the tenant, as observed by the appellate court, is unsustainable, merely because the landlord has purchased tenanted property. The trial Court observed in para 12, based on the view taken by Bombay High Court in **1989 Mah. R.C.J. Page 504);**

> "The trial Court approached the problem from a wrong perspective by observing that the landlords purchased the property which is tenanted and then claimed possession. This was totally a wrong approach."

10. Taking into account the facts of the present

case and above crystalised observations based on the Apex Court decisions, there is no material on the record to justify that the greater hardship would be caused to the tenant and not to the landlord. The issue of comparative hardship, as contemplated under the Bombay Rent Act has been duly proved by the landlord in his support and not by the tenant. The shortage of the accommodation and long occupation by the tenant in the premises including the attachment or sentiments, related to the premises and property in no way affect the claim of the landlord. The tenant failed to bring the case of oblique motive and dishonest intention of the landlord. It is difficult for the third person to explain and or even to guide the landlord how he should manage the existing premises to accommodate his whole family. The landlord is entitled to use and occupy the premises owned by him. The appellate Court, while dismissing their suit suggested various ways and means to the landlord, how he could use and utilise the premises to accommodate all the 14 members. It is difficult to accept such reasonings. Therefore, the impugned judgment and order dated 29/8/1992 is quashed and set aside. The Judgment and decree passed by the trial Court in Suit No. 1245/1988, is restored. The

plaintiff’s suit for possession is decreed, as prayed.

11. The petition is allowed. Rule made absolute in terms of prayer clause (a) and (b). There shall be no order as to costs.

[ANOOP V. MOHTA, J.]